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**IN THE
INDIANA TAX COURT**

MILLER BEACH INVESTMENTS, LLC,
as Assignee of JAMES NOWACKI,

Petitioner,

V.

DEPARTMENT OF LOCAL GOVERNMENT
FINANCE,

Respondent.

Cause Nos. 49T10-0602-TA-14
49T10-0602-TA-15
49T10-0602-TA-16

ON APPEAL FROM SEVENTEEN FINAL DETERMINATIONS OF
THE INDIANA BOARD OF TAX REVIEW¹

NOT FOR PUBLICATION
August 22, 2007

FISHER, J.

Miller Beach Investments, LLC (Miller Beach), as assignee of James Nowacki,

¹ The Court notes that although the Indiana Board of Tax Review (Indiana Board) held one hearing on this matter, it produced three certified administrative records, issued three Findings of Fact and Conclusions of Law, and issued seventeen final determinations. Thus, for ease of reference in this opinion, the Court will refer to the administrative record pertaining to Miller Beach's 49T10-0602-TA-14 appeal as "Cert. Admin. R14," the administrative record pertaining to its 49T10-0602-TA-15 appeal as "Cert. Admin. R15," and the administrative record pertaining to its 49T10-0602-TA-16 appeal as "Cert. Admin. R16."

appeals the final determinations of the Indiana Board of Tax Review (Indiana Board) valuing its real property for the 2002 tax year (year at issue). The issue for this Court to decide is whether the Indiana Board erred when it determined that Miller Beach failed to establish that its 2002 assessments were incorrect.

FACTS AND PROCEDURAL HISTORY

During a commissioner sale in late 2002, James Nowacki purchased seventeen unimproved residential parcels, located in Gary, Indiana, for a total of \$11,565.² For the year at issue, the Department of Local Government Finance (DLGF) assessed these parcels at \$81,700.³ Believing that the DLGF's assessments were too high, Mr. Nowacki appealed them to the Indiana Board. In 2005, while the appeals were pending with the Indiana Board, Mr. Nowacki sold the parcels to Miller Beach for a total of \$13,030⁴ and accordingly assigned his appeal rights to Miller Beach.

On July 6, 2005, the Indiana Board conducted one hearing on the appeals. On January 5, 2006, the Indiana Board issued its final determinations denying each of Miller Beach's requests for reductions in the parcels' assessed values. Specifically, the Indiana Board determined that Miller Beach's evidence was not probative as to the parcels' 2002 market values-in-use because commissioner sales are not conducted

² Specifically, Nowacki purchased one parcel for \$900, one parcel for \$830, one parcel for \$685, ten parcels for \$675 each, and four parcels for \$600 each. (See Cert. Admin. R14 at 2-21; Cert. Admin. R15 at 120-29; Cert Admin. R16 at 46-47.)

³ The DLGF assessed one parcel at \$9,000, one parcel at \$7,200, one parcel at \$6,000, one parcel at \$5,900, five parcels at \$4,800 each, six parcels at \$4,000 each, one parcel at \$3,200, and one parcel at \$2,400. (See Cert. Admin. R14 at 2-21; Cert. Admin. R15 at 2-46; Cert. Admin. R16 at 58-65.)

⁴ Miller Beach purchased one parcel for \$1,010, one parcel for \$930, one parcel for \$770, ten parcels for \$760 each, and four parcels for \$680 each. (See Cert. Admin. R14 at 77-82; Cert. Admin. R15 at 130-49; Cert. Admin. R16 at 48-51.)

under normal market conditions thus, sale prices derived from such sales are not equivalent to market values. (See Cert. Admin. R14 at 35-36; Cert. Admin. R15 at 70-71; Cert. Admin. R16 at 17-18.) Additionally, the Indiana Board determined that Miller Beach failed to “explain how the 2005 sale prices related to the market value[s-in-use] of the [parcels] as of January 1, 1999.” (See Cert. Admin. R14 at 35-36; Cert. Admin. R15 at 70-71; Cert. Admin. R16 at 17-18.)

On February 24, 2006, Miller Beach initiated three original tax appeals. The Court heard the parties’ oral arguments on June 1, 2007. Additional facts will be supplied as necessary.

STANDARD OF REVIEW

This Court gives great deference to final determinations of the Indiana Board when it acts within the scope of its authority. *Wittenberg Lutheran Vill. Endowment Corp. v. Lake County Prop. Tax Assessment Bd. of Appeals*, 782 N.E.2d 483, 486 (Ind. Tax Ct. 2003), *review denied*. Consequently, the Court will reverse a final determination of the Indiana Board only if it is:

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory jurisdiction, authority, or limitations;
- (4) without observance of procedure required by law; or
- (5) unsupported by substantial or reliable evidence.

See IND. CODE ANN. § 33-26-6-6(e)(1) - (5) (West 2007). The party seeking to overturn the Indiana Board’s final determination bears the burden of proving its invalidity. *Oso/o*

Twp. Assessor v. Elkhart Maple Lane Assocs. L.P., 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003) (footnote omitted).

DISCUSSION

Under Indiana's assessment system, real property is assessed on the basis of its "true tax value." See IND. CODE ANN. § 6-1.1-31-6 (West 2002.) "True tax value" does not mean fair market value, but rather "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property[.]" 2002 REAL PROPERTY ASSESSMENT MANUAL (2004 Reprint) (hereinafter, Manual) (incorporated by reference at 50 IND. ADMIN. CODE 2.3-1-2 (2002 Supp.)) at 2. See also A.I.C. § 6-1.1-31-6(c). In turn, a property's market value-in-use "may be thought of as the ask price of a property by its owner, because this value . . . represents the utility obtained from the property, and the ask price represents how much utility must be replaced to induce the owner to abandon the property."⁵ Manual at 2 (footnote added).

In order to determine a property's market value-in-use, Indiana has promulgated a series of guidelines that explain the valuation process for both land and improvements. See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A

⁵ In markets in which sales are not representative of utilities, either because the utility derived is higher than indicated sale prices, or in markets where owners are motivated by non-market factors such as the maintenance of a farming lifestyle even in the face of a higher use value for some other purpose, true tax value will not equal value in exchange. In markets where there are regular exchanges, so that the ask and offer prices converge, true tax value will equal value in exchange[.]

2002 REAL PROPERTY ASSESSMENT MANUAL (2004 Reprint) (hereinafter, Manual) (incorporated by reference at 50 IND. ADMIN. CODE 2.3-1-2 (2002 Supp.)) at 2.

(2004 Reprint) (hereinafter, Guidelines) (incorporated by reference at 50 I.A.C. 2-3.1-2(c)), Books 1 and 2. The Guidelines provide the *starting point* for an assessor to determine a property's market-value-in use. See Manual at 2; Guidelines, Book 1 at 1. Nevertheless, should an assessor err in applying the Guidelines, an assessment will not necessarily be invalidated if the assessment accurately reflects the property's market value-in-use. See 50 IND. ADMIN. CODE 2.3-1-1(d) (2002 Supp.)

While a property's market value-in-use (i.e., true tax value), as ascertained through an application of the Guidelines, is presumed to be accurate, that presumption is rebuttable. See Manual at 6. Thus, a taxpayer

shall be permitted to offer evidence relevant to the fair market value-in-use of the property to rebut such presumption and to establish the actual true tax value of the property as long as such information is consistent with the definition of true tax value provided in th[e M]anual and was readily available to the assessor at the time the assessment was made. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals that are relevant to the market value-in-use of the property, and any other information compiled in accordance with generally accepted appraisal principles.

Id. Accordingly, when a taxpayer chooses to challenge an assessment, he must show that the property's assessed value does not accurately reflect its market value-in-use.⁶

In its appeal to this Court, Miller Beach asserts that the Indiana Board's final determinations are arbitrary, capricious, and unsupported by substantial evidence. Specifically, Miller Beach maintains that the evidence it presented during the

⁶ This Court has previously stated, "the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP)." *Kooshtard Prop. VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005), *review denied*.

administrative process, demonstrated that the DLGF's assessments of \$81,700 were incorrect for two reasons. First, Miller Beach explains that the commissioner sale prices actually reflected the parcels' 2002 market values because they were conducted in an open and competitive manner as the parcels were sold to the highest bidder. (See Pet'r Br. at 7-10; Oral Argument Tr. at 19-20.) Second, Miller Beach explains that the vast disparities between the parcels' assessed values and their 2005 sales prices obviously shows that the assessments were incorrect. More specifically, Miller Beach explains that in 2002, Mr. Nowacki purchased the parcels for \$11,565 and in 2005, it purchased them from Mr. Nowacki for \$13,030; thus, the evidence only shows that the parcels' appreciated from 2002 to 2005. (See Pet'r Br. at 6-7.) As such, Miller Beach claims that the DLGF's 2002 assessments of \$81,700 must be incorrect because the parcels were unaltered and nothing in the administrative record suggested that they had decreased in value between 2005 and 2002. (See Pet'r Br. at 6-7; Oral Argument Tr. at 8-10.) Miller Beach, however, has missed one fundamental point.

Indiana's assessment regulations provide that a property's 2002 assessment must reflect its market value-in-use as of January 1, 1999. See Manual at 4; Guidelines, Book 1, Chapter 2 at 7. See also *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). Thus, even assuming that the commissioner sale prices actually reflected the parcels' market values in 2002, Miller Beach has not explained how those prices or the prices it paid in 2005, relate to the parcels' January 1, 1999 values. See *id.* (explaining that as part of making a prima facie case, the taxpayer must walk the Indiana Board through every element of its analysis). As a result, the only evidence in the administrative record of the parcels' market values-in-use for the

year at issue is the DLGF's 2002 assessments. Therefore, the Indiana Board's final determinations were neither arbitrary, capricious, or unsupported by substantial evidence.⁷

CONCLUSION

For the above stated reasons, the final determinations of the Indiana Board are
AFFIRMED.

⁷ An Indiana Board final determination is supported by substantial evidence when a reasonable person could view the record in its entirety and find enough relevant evidence to support that determination. See *Amax Inc. v. State Bd. of Tax Comm'rs*, 552 N.E.2d 850, 852 (Ind. Tax Ct. 1990) (stating that "[s]ubstantial evidence is more than a scintilla[; i]t means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion"). Here, the Court cannot say, after reviewing the administrative records in their entirety, that the Indiana Board erred in denying Miller Beach's requests for reductions on the parcels' assessed values.